



# Arizona State Senate Issue Paper

October 24, 2007

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## CITIZENS' CLEAN ELECTIONS ACT

### INTRODUCTION

Arizona's Citizens' Clean Elections Act (Act), proposed by initiative petition, was approved in the November 1998 general election. The Act establishes a system to limit campaign spending and fundraising for political candidates in statewide and legislative elections. Those who wish to be "participating" Clean Elections candidates receive public financing for their election campaigns.

In 2007, the Act was amended for the first time. The 2007 amendments include a nonseverability clause binding the provisions of the 2007 amendments so that if any of the 2007 provisions are found to be invalid by the court, the amendments in their entirety are void.

### CLEAN ELECTIONS COMMISSION STRUCTURE

The Act is administered by the Clean Elections Commission (Commission), consisting of five members, no more than two of whom can be from the same political party or same county. The Act provides detailed criteria for Commission applicants, who were initially screened by the Commission on Appellate Court Appointments and grouped into "slates" for appointment by the Governor or other designated statewide officeholders.

In 2000, the Supreme Court held that the portions of the Act that expanded the duties of the Commission on Appellate Court Appointments beyond the scope of judicial appointment were unconstitutional. The 2007 amendments removed the authority of the Commission on Appellate Court Appointments to nominate candidates for vacant Commissioner positions and instead provides that Commission applicants will be selected directly by the appointing officer. The Commissioners serve five-year staggered terms.

### Enforcement

The Act establishes that the Commission enforce its voter education duties. The 2007 amendments altered the complaint process to provide a time limitation for the filing of external complaints: 90 days after the postelection report is filed or 90 days

after the completion of the canvass of the election, whichever is later. Additionally, the Commission is prohibited from requiring a candidate to use a reporting system other than the system jointly approved by the Commission and the Secretary of State's (SOS) office.

### ***Rule Making Authority***

Although statutorily exempt from Arizona's Administrative Procedure Act, the Commission is required to adopt rules to govern and carry out its duties. Proposed rules must be filed with the SOS's office and heard in public meetings, with at least 60 days allowed for comment before adoption in an open meeting. The final rule must also be filed with the SOS's office for publication in the Arizona Administrative Register.

Final rules take effect immediately except, beginning January 1, 2010, a rule will be immediately effective only upon the unanimous vote of the Commission. A less than unanimous vote will suspend implementation of the final rule until January 1 in the year following adoption of the rule. Similarly, a unanimous vote by the Commission is required before a final rule, that was proposed due to the action of a particular candidate or committee, is adopted by the Commission; a less than unanimous vote by the Commission will result in an effective date for the next election cycle.

### ***FUNDING SOURCES***

The Act is funded by a ten percent surcharge on certain civil penalties and criminal fines and by any other person who donates to pay for public financing of candidates. Taxpayers who donate are eligible for a tax credit in the amount of the donation up to \$500 or 20 percent of the taxpayer's total tax owed, whichever is more. The monies are deposited into a Clean Elections Fund administered by the State Treasurer that is audited every four years by the Auditor General.

The Commission cannot spend more than \$5 multiplied by the number of Arizona resident personal income tax returns filed during the previous calendar year. The Commission may use up to ten percent of the monies for reasonable and necessary administration and

enforcement expenses and must apply ten percent of the monies towards voter education. The Commission's voter education duties include providing for a voter education guide, sponsoring debates and adopting rules.

### ***Proposition 106***

In 2004, Proposition 106 qualified for the November ballot. If passed, Proposition 106 would have removed the dedicated funding source for the Commission. The de-funding of the Commission would have prevented it from regulating campaign finance laws, holding debates and publishing voter guides. Proposition 106 also would have provided that the surcharge, penalty and other money in the Clean Elections Fund on and after the effective date of the proposition would be deposited in the state General Fund.

In August 2004, the Arizona Supreme Court upheld a superior court ruling to remove Proposition 106 from the ballot because it violated the "separate amendment rule." Under Arizona's Constitution, a ballot measure to further amend the Constitution may only contain one subject. The Supreme Court agreed with the lower court that a voter might reasonably agree with one part of the initiative, such as eliminating publicly financed political campaigns, but might support the Commission's other duties.

### ***Lobbyist Fee***

As originally enacted, the Act included additional funding through a \$100 annual fee on lobbyists representing for-profit entities, including trade groups of for-profit entities. In 2002, former State Representative Steve May was fined for violating a civil parking ordinance. On top of his \$27 fine, among other surcharges, appeared a ten percent surcharge to support Clean Elections, which he refused to pay. He and Rick Lavis, a lobbyist who had been assessed a \$100 fee under the Act, challenged the constitutionality of the Act as violating their free speech rights.

A federal court dismissed the original lawsuit for lack of subject matter jurisdiction under the Tax Injunction Act (a federal statute)

because it determined that this action challenged a state tax. Lavis and May then sought declaratory and injunctive relief in superior court. A superior court judge held the lobbyist fee was unconstitutional and severed that provision of the Act; it upheld the surcharge on civil and criminal fines.

On appeal, the Arizona Court of Appeals reversed the trial court decision and found that the portion of the law relating to fees and surcharges was an unconstitutional restraint on the exercise of free speech. On October 11, 2002, the Arizona Supreme Court unanimously upheld the funding system, ruling that it was constitutional, overturning the Court of Appeals decision. On March 24, 2003, the United States Supreme Court refused to hear an appeal of the Arizona Supreme Court decision and, in 2007, the Legislature repealed the language requiring the \$100 annual fee from lobbyists.

#### **QUALIFICATION AS A PARTICIPATING CANDIDATE**

All political candidates running for election in Arizona are subject to statutory contribution limitations. Limits are subject to inflationary adjustments made biennially by the SOS based on the U.S. Department of Labor's consumer price index. Candidates who do not receive public Clean Elections money, commonly called "nonparticipating" or "traditional" candidates, are subject to a 20 percent reduction of the regular contribution limits and must also provide fundraising and spending reports to the Commission to provide equal funding to the participating candidate.

Candidates who wish to receive public financing can submit an application to the SOS for certification as a participating candidate in order to receive money from the Commission. To qualify, candidates must receive a specified number of \$5 contributions from registered voters, limit the spending of their personal monies for their candidacy, limit their campaign spending to the dollar amounts received from the Commission and comply with controls on their campaign account. The election spending limits are determined by statute. Candidates who

agree to limit their fundraising and spending qualify as a participating candidate.

At the beginning of the primary election period, the Commission pays an amount equal to the primary election spending limit to a participating candidate's campaign account in a party primary election. The process is repeated at the beginning of the general election period with the participating candidate receiving an amount equal to the general election spending limit. Other specified amounts are available for participating candidates who are independent or are unopposed.

**Table 1**  
**Spending Limits for Initiating Payment to Participating Candidates – A.R.S. § 16-961**

	<u>Primary</u>	<u>General (50% greater than primary)</u>
<b>Mine Inspector</b>	\$ 41,349	\$ 62,024
<b>Treasurer/ Superintendent of Public Instruction/ Corporation Commissioner</b>	\$ 82,680	\$124,020
<b>Secretary of State/ Attorney General</b>	\$165,378	\$248,067
<b>Governor</b>	\$638,222	\$957,333
<b>Legislator</b>	\$ 12,921	\$ 19,382

The Commission makes additional payments to the participating candidate's campaign account as the nonparticipating candidate exceeds the election spending limits, up to three times the amount of the spending limit. The 2007 amendments reduced a participating candidate's payment during the primary election period by deducting the early contributions raised and by six percent of a nonparticipating candidate's fundraising expenses. The six percent fundraising deduction also applies to a participating candidate's payment during the general election period. Correspondingly, an independent or unopposed candidate's expenditures are deducted during the primary from the total amount of monies raised to determine the amount of funds to be paid to the

participating candidate at the start of the general election period.

Participating candidates who fail to qualify for the ballot must return unspent public monies. These “disqualified” participating candidates must return public monies above an amount to pay any unpaid bills for expenditures made prior to the date the candidate failed to qualify for the primary ballot and return payments made to a family member if the candidate is unable to account that the goods or services by the family member was at fair market value. Additionally, a disqualified participating candidate must return to the Commission, within 14 days, all remaining assets purchased with public monies.

The Act also establishes reporting requirements for participating candidates in addition to other campaign finance laws and provides various penalties, including forfeiture of office, for violations of its provisions.

## ***CAMPAIGN FINANCE PENALTIES***

Former Representative David Burnell Smith was elected to serve in the House of Representatives during the 47th Legislature. He ran as a publicly funded candidate and signed a form promising to adhere to the provisions of the Act and to the campaign finance rules established by the Commission.

The Commission investigated Smith's campaign expenditures and found that Smith violated campaign finance rules by spending approximately 17 percent more on his election than permitted by law. The Commission determined that his sanction was removal from office and Smith appealed this decision.

There were many procedural aspects of the case, but the Arizona Supreme Court evaluated Smith's likelihood of success on the merits of his case. Smith claimed that he could only be impeached or recalled from office, and only for reasons set forth in the Constitution. The Court had previously concluded that the constitutional provisions providing for means of removal from office do not limit the power of the Legislature from creating additional ways or causes for removal from public office. The Court found that the public, acting in its legislative capacity, authorized the removal from public office through the Act, which specifically authorizes removal from office as a sanction for serious violations of the campaign finance laws. The Court also found that Smith agreed to abide by those terms and nothing in the Arizona Constitution precluded his removal from office. Smith was the first state legislator to be removed from office for violating a publicly financed campaign system.

## ***ADDITIONAL RESOURCES***

- Clean Elections Act Statutes:  
Arizona Revised Statutes §§ 16-940-16-961
- Citizens' Clean Elections Commission  
[www.ccec.state.az.us](http://www.ccec.state.az.us)
- Arizona Secretary of State  
[www.azsos.gov](http://www.azsos.gov)
- 2007 Amendments: Laws 2007, Chapter 277 (H.B. 2690)